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IAC SEARCH & MEDIA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOSTWAY CORPORATION, an Illinois
Corporation,,

Plaintiff,

v.

IAC SEARCH & MEDIA, INC., a Delaware
Corporation,

Defendant.

Case No. C 07-3759 JCS

**DECLARATION OF SCOTT
HAYASHIDA IN SUPPORT OF
DEFENDANT IAC SEARCH &
MEDIA, INC.'S OPPOSITION TO
PLAINTIFF'S TEMPORARY
RESTRAINING ORDER**

I, SCOTT HAYASHIDA, hereby declare and state as follows

1. I am an employee of IAC Advertising Solutions, a division of defendant IAC Search & Media, Inc., defendant herein ("IAC"). I make this declaration of my own personal knowledge and if called upon as a witness, could and would testify truthfully to the facts stated herein.

2. At all times in 2007, I have been one of the people at IAC responsible for overseeing the implementation of certain aspects of IAC's agreement with plaintiff Hostway Corporation ("Hostway"). In particular, I have been responsible for monitoring the implementation of the Ask.com search box on Hostway's hosted pages. The implementation of the search box on such hosted pages is one of the fundamental requirements of the hosting agreement, and was at all times of paramount importance to IAC. The agreement specifies that

1 the Ask.com search box will be implemented at or before the Launch Date. (see Advertising
2 Services and Search Services Syndication Agreement ("the "Agreement"), attached as Exhibit 1
3 to the Declaration of Namit Merchant, at §3.7.1.)

4 3. Hostway did not implement the Ask.com search box at the time of Launch, and
5 has not done so at any time thereafter, despite repeated notification by IAC and by me personally
6 to do so.

7 4. I first provided Hostway with the necessary link to insert the Ask.com search box
8 on April 24, 2007. Attached hereto as Exhibit A is a true and correct copy of an email chain that
9 includes by April 24 message providing the link.

10 5. When I first requested a date by which the search box would be implemented,
11 Hostway responded by stalling me, stating that they would get me more information "in a few
12 weeks." (See message of April 25, 2007, from Namit Merchant in Exhibit A.)

13 6. On May 16, 2007, I gave further notice to Hostway that it was in breach of the
14 agreement in my email to Namit Merchant of that date. (Attached hereto as Exhibit B is a true
15 and correct copy of an e-mail chain that includes this message.) Although Hostway previously
16 had promised that the search box would be implemented by June, Mr. Merchant's response to my
17 message was to say that "that project hasn't been picked up yet dues to high priority issues on
18 domain monetization side (sic)." (Email of May 16, 2007, from Namit Merchant to the declarant,
19 contained in Exhibit B.)

20 7. Hostway thereafter continued to stall our demands for implementation of the
21 search box. In his message to me of June 23, 2007, Mr. Merchant acknowledged the importance
22 of the search box implementation, and stated "We've agreed from the beginning that the bulk of
23 the revenue will be generated from the search boxes." (See email of June 23, 2007, from Namit
24 Merchant, a true and correct copy of which is contained in the email chain attached hereto as
25 Exhibit C.) Nonetheless, Hostway continued to stall the search box implementation while
26 proceeding instead to deal with issues that were of more interest to Hostway. (*Ibid.*)
27
28

SCOTT HAYASHIDA DECLARATION ISO DEFENDANT'S OPPOSITION TO TRO
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